Systemic Factor: The Detrimental and Sustained Effects of Incarceration

Acknowledgement: This research document produced by Legal Aid Saskatchewan was reviewed by Dr. Bryce Stoliker (PhD). Dr. Stoliker is a Research Officer at the Centre for Forensic Behavioural Science and Justice Studies at the University of Saskatchewan. He holds a B.A. (Hons.) in Psychology and Criminology, an M.A. in Sociology, and a Ph.D. in Criminology. His research focuses broadly on the correctional system and specifically on the (mental) health and well-being of people in custody. He has over 8 years of experience in corrections research and has published extensively on the topic of suicide and self-harm among correctional populations, as well as the topic of older people in custody. Since joining the Centre in 2020, Dr. Stoliker has been involved in various research and evaluation projects tasked with assessing criminal justice processes, as well as examining programs and services for justice-involved individuals in Saskatchewan. The research document was reviewed for comprehensiveness and accuracy to ensure quality and validity of the research. The information in this document is current as of April 2024.

Themes: Systemic Racism; Incarceration; Over-Incarceration; Health; Mental Health; Prison Segregation; Custody; Systemic Discrimination; Colonialism; Reintegration; Release Planning

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Contents:

Indigenous Incarceration Statistics

"Within Canada's criminal justice system, Indigenous people are overrepresented as both victims and offenders. For example, in 2014, 28% of Indigenous people 15 years of age and over reported being a victim of crime in the previous 12 months, compared to 18% of non-Indigenous adults (Department of Justice, 2019). As Table 7 shows, the figures are even more disproportionate when looking at victims of violent crime, murder, and sexual assault. In terms of incarceration, Indigenous adults accounted for about 30% of adults taken into custody in 2017/18, a figure that increased by 10 % from a decade earlier. The Supreme Court and several inquiries have identified systemic discrimination throughout the criminal justice system, including policing, courts, and corrections (Johnson, 2019). Even when employment, income, and substance use issues are taken into consideration, Indigenous ancestry remains highly associated with forceful police interventions and incarcerations as well as denial of bail, resulting in disproportionately long sentences and over-representation of Indigenous people in maximum security institutions (Kaiser-Derrick, 2019; Monchalin, 2016; Razack, 2015; Singh et al., 2019; Weatherburn, 2014). For those who are targets of crime, this means being viewed as less worthy victims and less credible witnesses, as well as having their requests for assistance often being ignored (Roach, 2019)."[i]

The overrepresentation of Indigenous people as both victims and offenders within Canada's criminal justice system underscores systemic discrimination across policing, courts, and corrections, leading to disproportionately long sentences and the marginalization of Indigenous voices and experiences.

Figure 1.1[ii]

Figure 1.1 Indigenous overrepresentation as victims of crime, by type of crime, 2014

Type of crime	Indigenous per 1000 population	Non-Indigenous per 1000 population
Victims of violent crime	163	74
Women as victims of violent crime	220	84
Men as victims of violent crime	110	66
Women as victims of sexual assault	115	35
Homicide victims 2017	8.76	1.42

Source: Department of Justice (2019). Data for persons 15 years of age and over.

"Out of all the Provinces, Saskatchewan and Manitoba hold the highest [Indigenous admissions to incarceration] at 76.2% and 73.7% respectively, when considering the total number of admissions per province. Alberta follows with 41.5%. These numbers are alarming because they indicate that these three prairie Provinces are incarcerating their Indigenous people at a much higher percentage than other provinces. This is especially true for the Provinces of Saskatchewan and Manitoba. When comparing these admission percentages to other Provinces, it becomes disturbingly clear that the prairie Provinces are experiencing what one would call an overincarceration epidemic of Indigenous people. Saskatchewan in particular is admitting its Indigenous adults at a percentage 24 times higher than Prince Edward Island, 2.4 times more than British Columbia and 6.2 times more than Ontario. Prince Edward Island's Indigenous

admission percentage sits at a low 3.2%. British Columbia and Ontario sit at 31.9% and 12.2%, respectively."[iii]

"Evidently, even though Ontario and British Columbia have more Indigenous people in total, Saskatchewan and Manitoba are admitting more of their smaller Indigenous populations to corrections. The difference in the Indigenous population percentages for Saskatchewan (16.3%), Alberta (6.5%) and Manitoba (18.0%), compared to Ontario (2.8%) and British Columbia (5.9%), does not [solely] account for the fact that the prairie provinces have drastically higher admission percentages. It is interesting to note that British Columbia (270,585), Alberta (258,640) and Manitoba (223,310) have similar Indigenous populations, and yet their Indigenous admission numbers and percentages differ substantially. While British Columbia admitted 8,829 Indigenous people in 2016/2017, Alberta admitted 19,861 Indigenous people (more than double) and Manitoba admitted 21,284 Indigenous people (almost triple). Saskatchewan has roughly 100,000 less Indigenous people than British Columbia, and yet Saskatchewan admitted 9,867 Indigenous people in 2016/2017 (over 1,000 more). Ontario on the other hand, has an Indigenous population of 374,395 and yet only 9,098 Indigenous people were admitted in 2016/2017, almost 800 less than Saskatchewan. Clearly, there is something happening in the Prairie Provinces that is causing much higher percentages of Indigenous people to be admitted. While these numbers are a serious wake up call, these are only the adult admissions."[iv]

Figure 1.2[v]

Figure 1.2

Table 4.4: Comparing Provincial/Territorial Aboriginal Populations to Provincial/Territorial Aboriginal Adult admissions

Province/Territory	Aboriginal Population	Aboriginal Adult Admissions 2016/2017	Number of Aboriginal Adult Admissions per 100,000 Aboriginal People
British Columbia	270,585	8,829	3,263
Alberta	258,640	19,861	7,679
Saskatchewan	175,020	9,867	5,638
Manitoba	223,310	21,284	9,531
Ontario	374,395	9,098	2,430
Quebec	182,885	2,285	1,249
Nova Scotia	51,495	454	882
Newfoundland	45,730	519	1,135
New Brunswick	29,385	521	1,773
Prince Edward Island	2,735	21	768
Yukon	8,195	322	3,929
Northwest Territories	20,860	901	4,319
Nunavut	30,555	861	2,818
Canada	**1,673,785**	**74,823**	**4,470**

"**S**askatchewan in particular has an Indigenous youth [incarceration] admission percentage of 90.3% of total youth admissions. This is utterly astonishing because what these percentages are telling us is that 90.3 percent of total admissions for the years 2016/2017 were Indigenous youth. Manitoba also has a high Indigenous youth admission percentage at 74.2 % of total youth admissions. What is happening in these provinces that is causing so many Indigenous youth to be incarcerated compared to the rest of the country? This stark reality points to a larger issue in the prairie provinces regarding the younger demographic, and this issue needs immediate attention to assess the impact of the over-incarceration of Indigenous youth."[vi]

"In 2020/2021, Indigenous men represented 30% of male admissions to provincial and territorial custody and 32% to federal custody. Indigenous women represented 42% of female custody admissions to

provincial and territorial custody and 40% to federal custody in 2020/2021. Male Indigenous youth represented 48% of youth male admissions to custody, while female Indigenous youth represented 62% of youth female admissions to custody."[vii]

"In 2019/2020 and 2020/2021, Indigenous persons in Canada were incarcerated at a much higher rate than non-Indigenous persons. According to the new Over-Representation Index, the Indigenous incarceration rate was 8.9 times higher than the non-Indigenous incarceration rate in 2020/2021 in the five provinces participating in this *Juristat* (Nova Scotia, Ontario, Saskatchewan, Alberta and British Columbia)."[viii]

Recognizing Systemic Discrimination in the Justice System

Systemic discrimination in the criminal justice system can be experienced from the first interactions with police, to bail, through sentencing, and inevitably through security level classification which further contributes to over-incarceration of Indigenous individuals. This is important to recognize as the over-representation of Indigenous peoples within Canada's prisons is in large part caused by the systemic racism ingrained within the colonial justice system.

"Systemic discrimination can be seen in all phases of the criminal justice system: policing, courts, and corrections. The Aboriginal Justice Inquiry of Manitoba provides a definition of systemic discrimination: 'The term 'systemic' discrimination is used where the application of a standard or criterion, or the use of a 'standard practice,' creates an adverse impact upon an identifiable group that is not consciously intended' (1991: 100). It should be noted, however, that this [is] a problem that affects not only Indigenous people, but also other racialized and minority groups as demonstrated, for example, by the Commission on Systemic Racism in the Ontario Criminal Justice System (1995). That said, Indigenous people as a whole are the most adversely affected by systemic discrimination (Rudin, 2007). Systemic discrimination in the criminal justice system is manifested in various ways and, ultimately, it contributes to the overrepresentation of Indigenous people at all stages of the system."[ix]

Policing

"Rudin addressed the issues of over- and under-policing in a paper prepared for the Ipperwash Inquiry (Rudin, 2007). He said the following:

> '[Indigenous] people are both over- and under-policed. The impact of over-policing is that [Indigenous] people come before the court in large numbers because [Indigenous] communities or communities where [Indigenous] people live are policed more aggressively than other communities…. At the same time, [Indigenous] people are also under-policed. The legitimate claims of [Indigenous] people that their rights, either individually or collectively, are being violated [and these violations] are not responded to with the same vigour as when those claims are advanced by non-[Indigenous] people….. Over-policing and under-policing are different sides of the same coin. Each feeds upon the other to perpetuate systemic discrimination and negative stereotypes regarding [Indigenous] people (2007, 64).'

Systemic discrimination and negative stereotypes result in more Indigenous people being arrested, charged, and entering the criminal justice system."[x]

"Indigenous offenders are sentenced to custody more often than non-Indigenous offenders. This is true for men and women, adults and youth in provincial and territorial correctional services. In 2016-2017, 30 percent of the total sentenced custody population were Indigenous. For Indigenous youth, the comparative numbers for secure custody and open custody were even higher at 55 percent and 60 percent, respectively (Department of Justice Canada 2018a)… Indigenous accused are also denied bail significantly more often and therefore held in remand (adults) or pre-trial detention (youth) more frequently and for longer than non-Indigenous accused."[xi]

Bail

The challenges Indigenous individuals may face in meeting bail conditions, and the denial of bail, contributes to the statistical overrepresentation within remand populations. This is compounded by a higher likelihood of breaching conditions due to social and economic factors disproportionately effecting Indigenous peoples (such as housing insecurity), and ultimately impacts their likelihood of pleading and being found guilty.

"Rudin points out that, consistent with the Criminal Code, courts deny bail and impose remand for one or more of three reasons: (i) the person is not likely to attend court for his/her next hearing or trial; (ii) the person is considered a threat to the community or an individual; or (iii) the nature of the alleged crime is so offensive that it would shock the public if the alleged offender were released on bail (Rudin, 2007: 51). If bail is granted, it is done with certain conditions attached. A standard condition is that the accused have a surety; i.e., a person who is able and willing to make a payment to the court in the event the accused breaks their conditions or fails to appear. This is often difficult for individuals accused of a crime; however, it can be especially difficult for Indigenous accused. Indigenous people living in the city are often without family or other supports and so will not have a surety to back them. These same individuals are often abjectly poor, homeless, unemployed, and have little education. (This is consistent with the socio-economic marginalization of many Indigenous people, as suggested above.) But whether in the city or in a remote community, poverty and the inability to post bail or to have a surety who can post bail is common and typically leads to remand… Another significant factor leading to Indigenous overrepresentation is that Indigenous accused are relatively more likely to breach their conditions, whether bail conditions or probation conditions. Typically, this works against individuals who have been before the courts previously; bail is usually denied in such cases. The issue of bail is important for several reasons, including the fact, as various experts have shown (e.g., Knazan, 2009), that 'those held in custody on remand are more likely to plead guilty and be found guilty than those who are released pending trial' (Rudin, 2007: 53 citing Kellough and Wortley, 2002; Bressan and Coady, 2017)."[xii]

When the circumstances of the individual are accounted for in release conditions, conditions can be tailored to more effectively account for the individual's unique challenges. For example, "Arguably, when a judge is aware of the circumstances of the accused, they are also better equipped to provide appropriate probation conditions for the accused. Appropriate conditions could include those that do not incidentally burden the accused because of the very nature of their circumstances. For example, if the accused is homeless and as a result is found soliciting in a coffee shop to stay warm for the winter, the court should concern themselves more with finding a shelter for the accused rather than the solicitation... [I]n some instances, it may not be wise to put an alcohol condition on the individual, because in some circumstances this may result in a continued breach on the part of the accused. The result being that the accused is before the court again. However, the court should also be aware that in some treatment facilities you cannot be on drugs or alcohol to attend. Therefore, even if a no alcohol clause is avoided, the very fact that treatment for alcohol may be on the condition sheet could impede the individual as well."[xiii]

Sentencing Bias and Offender Risk Classification

Figure 1.3[xiv]

Figure 1.3 shows the average sentenced-months-per-person in certain offence categories for Indigenous and Non-Indigenous offenders. This data was extracted from Saskatchewan sentencing decisions posted on CanLII, for the years 1996-2014. The pool of sentencing decisions for Indigenous offenders was 214, compared to 270 for non-Indigenous offenders. Indigenous offenders "were sentenced to an average of 87.4 months custody per person."[xv] Comparatively, Non-Indigenous offenders [NIA] "were sentenced to 39.3 months custody per person on average."[xvi]

The presented data demonstrates that Indigenous offenders receive disproportionately longer sentences in comparison to non-Indigenous offenders. From this data, it can be concluded that Indigenous offenders are subject to biased sentencing practices which result in more frequent and longer bouts of incarceration.

Figure 1.3: Average Sentences for Indigenous and Non-Indigenous Offenders (Saskatchewan, 1996-2014)

	No indication if Aboriginal	Aboriginal
Cases of fraud:	19.1 months per person	17 months per person
Drug trafficking:	13.6 months per person	13.8 months per person
Hazardous driving, including dangerous and impaired driving and driving which causes death and injury:	9.8 months per person	30.3 months per person
Child deaths	30 months per person	33 months per person
Sex crimes	59.8 months per person	84.5 months per person
Home invasions	125.6 months per person	172.4 months per person
Robberies	29.2 months per person	78 months per person
Attempted murder	264 months per person	139 months per person
Manslaughter	101.3 months per person (all men)	97.3 months per person (7 women @ 57.6 months per person and 8 men @ 137.3 months per person)
Aggravated assault	42 months per person	142.4 months per person
Assault with a weapon	12 months per person	122.8 months per person
Assault causing bodily harm	2.5 months per person	34.3 months per person
Assault PO	0 months per person	12.2 months per person
Common assault	3.6 months per person	19 months per person

Sentencing bias also influences offender security classifications, wherein Indigenous persons are more frequently designated as 'high security risk,' dangerous and long-term offenders.

"Saskatchewan designates people as dangerous offenders at a rate which is vastly disproportionate to [its] population when compared to all of the other Provinces. For example, [as of 2014] Saskatchewan had over 4 times the rate of dangerous offenders compared to Alberta and Manitoba and a rate much higher than in any of the other provinces."[xvii]

Public Safety Canada stated in its *Corrections and Conditional Release Overview for 2013* that "[Indigenous] offenders account for 29.4% of the dangerous offenders and 20.5% of the total federal offender population."[xviii] "It also states that Saskatchewan had designated 61 people as dangerous offenders

since 1978 compared to Manitoba's 18 dangerous offenders and Alberta's 53 dangerous offender designations" despite Saskatchewan's smaller population size than Manitoba or Alberta. [xix]

A "dramatic example [of this classification bias] can be found regarding the average months of custody per person **[see Figure 1.3]** for which [Indigenous offenders] in Saskatchewan were convicted of assault causing bodily harm (34.3 months per person as shown in the chart above)[.] 5 out of those 9 sentencing decisions were dangerous offender applications which resulted in [Indigenous offenders] being designated as dangerous offenders on 4 of those applications and designated as long term offenders on one of those applications. In contrast, none of the 6 NIA assault causing bodily harm offenders were submitted to dangerous offender applications and 5 of those NIA offenders were sentenced to a non-custodial sentence which resulted in an average sentence of only 2.5 months per person or 14 times less than for an [Indigenous] offender."[xx] From this evidence, it is apparent that Dangerous Offender classifications impact the sentencing options which are available to a judge (i.e., custodial vs, non-custodial, length of sentence), and thus impacts prospects for custody and parole.

As of 2014, "The Crown's success rate in achieving dangerous offender or long term offender designation, as recorded on CanLII, is remarkable. Out of the 87 dangerous offender and long term offender applications recorded for Saskatchewan on CanLII since 1997 only 2 such applications were completely dismissed."[xxi]

The sentencing disparities seen in DO and LTO classifications are also seen in prisoner security classifications; statistical data collected in 2016 demonstrates that, "…just 16.1 percent of the Indigenous prisoner population was classified at minimum security, compared to 23.7 percent for non-Indigenous prisoners. Further, more Indigenous prisoners were classified at medium security, at 67.6 percent versus 61.9 percent for non-Indigenous prisoners. Finally, 16.3 percent of Indigenous prisoners are classified at maximum compared with 14.5 percent of non- Indigenous prisoners. Like Indigenous overrepresentation generally, this disproportionate classification in 2016 is consistent throughout Canadian history."[xxii]

Security risk classification is determined through risk assessments of offenders. In Canada, probation, parole, and corrections' officers rely on the Risk-Need-Responsivity Model used in Pre-Sentence Reports and other Actuarial Risk assessments to determine security classification. "…[T]he utilization of actuarial risk assessments may exacerbate or perpetuate racial and gender inequalities. Although there are a variety of mechanisms through which this may occur (Goel et al., 2021), many concerns center on the data used to predict individual scores and generate the assessments themselves. Many Actuarial risk assessments incorporate data on employment status, substance use, criminal victimization, and other so-called dynamic needs. Critically, the distribution of these predictors across communities, racial groups, and genders are not the result of individual decisions but social and political policies. Comparatively higher rates of unemployment and substance dependency among Indigenous persons, for example, are consequences of trauma, cultural genocide, community disinvestment, and social marginalization brought about by the Canadian government (TRC, 2015). The incorporation of these predictors into risk assessments may thus disproportionately impact Indigenous persons, subjecting them to more punitive carceral housing and fewer opportunities to participate in rehabilitative programs."[xxiii]

"Even seemingly 'race-neutral' data, such as criminal-legal involvement, may not serve as objective measures of risk. Black and Indigenous people in Canada, for example, are disproportionately targeted by the police and more likely to be arrested for out-of-sight offenses (Owusu-Bempah & Wortley, 2014). Many of these disparities persist even after accounting for participation in criminal behavior or community-level

crime rates (Wortley & Jung, 2020), suggesting they are due to racial profiling or state surveillance rather than individual behavior."[xxiv]

While in Custody

"The main source of information on federal corrections, particularly on custodial institutions, is the Office of the Correctional Investigator (OCI). OCI Annual Reports and special reports commissioned by the OCI (e.g., Mann, 2009; OCI, 2012), clearly indicate that Indigenous inmates are subject to systemic discrimination while in prison.

> In his 2013-2014 Annual Report, the Correctional Investigator made the following comments which are worth repeating here:
>
> ' …the factors and circumstances that bring [Indigenous] people into disproportionate contact with the federal correctional system defy easy solutions. The gap in outcomes between [Indigenous] and non-[Indigenous] offenders is widening as the most significant indicators of correctional performance continue to trend downward. [Indigenous] people under federal sentence tend to be younger, less educated, and more likely to present a history of substance abuse, addictions and mental health concerns. They are more likely to be serving a sentence for violence, stay longer in prison before first release and more likely to be kept at higher security institutions.
>
> They are more likely to be gang-affiliated, overinvolved in use of force interventions and spend disproportionate time in segregation. [Indigenous] offenders are more likely denied parole, revoked and returned to prison more often. The situation is compounded by the fact that the proportion of [Indigenous] people under federal sentence is growing rapidly. (OCI, 2014: 43-44)'"[xxv]

Incarceration itself is considered a prominent *Gladue* factor. The "revolving door of the criminal justice system" often exacerbates an individual's challenges and contributes to their overall *Gladue* factors, as was found in *R. v. Ipeelee.* More specifically, in the case of Frank Ralph Ladue, the courts found that "Correctional Service Canada's administrative error caused Mr. Ladue to be placed in an environment in which he would be vulnerable to breaching his LTSO[1] [a halfway house with close proximity to substances], but also that his breach is directly connected to his addiction to opiates, which he began using in a federal penitentiary (paras 27-30)."[xxvi] It is then obvious to see the connection between experiences of incarceration and continued justice system re-contact, where the former can exacerbate pre-existing challenges and create new challenges. In the case of Mr. Ladue, it was through incarceration he developed an addiction to opiates and cocaine, which would later cause a breach in his LTSO, because of CSC's administrative errors that disrupted his placement at a halfway house.

Gladue Factors in Pre-Sentence Reports: Failing to Uphold the Gladue Principles

Pre-sentence reports have long been used in place of Gladue Reports or comprehensive Gladue Submissions. The use of pre-sentence reports in lieu of actual Gladue Reports is a practice that is cause for concern, as PSRs generally are unable to provide a multi-faceted, neutral, and trauma-informed account of an individual.

"…Parkes (2012) argues that adding *Gladue* factors to pre-sentence reports is ineffective because the latter has a fundamentally different purpose. Pre-sentence reports are meant to provide risk assessment

[1] Long-Term Supervision Order

to the court of the offender's likelihood to reoffend. In contrast, a Gladue Report provides 'culturally situated information which places the offender in a broader socio-historical context… and reframes the offender's risks/need by holistically positioning the individual as part of a community and as a product of many experiences' (Parkes 2012, p. 24). "[xxvii]

"… Parkes (2012) explains that *R v Knott* illustrates how inadequate *Gladue* information can actually undermine efforts to reduce over incarceration. In writing the decision to order a suspended sentence for an Indigenous man convicted of aggravated assault, Justice McCawley addressed the inadequacy of the pre-sentence report that was prepared. Justice McCawley noted that although Mr. Knott's pre-sentence report mentioned general *Gladue* factors, they were not linked to his particular experiences – such as the crucial factor that his grandparents were residential school survivors (para 19). The report also concluded that Knott was at a high risk to reoffend, but Justice McCawley found the assessment to be erroneous because the factors considered were not put into context:

> 'When one puts some of the concerns which might otherwise carry significant weight in context a very different picture emerges. Mr. Knott was found to be supportive of crime due to his reported antisocial behaviour and to demonstrate 'a pattern of generalized trouble in the sense he reported financial problems, has never been employed for a full year, has been suspended and expelled, has two non-rewarding parents, could make better use of his time and has few anticriminal friends.' In my view these are exactly the kinds of systemic issues that need to be considered in the appropriate context. … For example, Mr. Knott's lack of a history of employment to a large extent can be explained by his taking on the care of his grandparents who raised him and, to all intents and purposes, were his parents...' (para 23-24)"[xxviii]

"As *R v Knott* demonstrates, when *Gladue* factors are added to pre-sentence reports, but not contextualized in the experience of Indigenous communities, they are actually seen as risk factors justifying incarceration. As such, drawing probation officers' attention to these factors may unintentionally discriminate against Indigenous offenders instead of reducing over incarceration. This may explain why 76% of offenders sentenced [based on] a repeat offence received a shorter sentence when a Gladue Report was prepared, compared to offenders without Gladue Reports (Barnett and Sundhu 2014)… Thus, although *Gladue* information must always be requested where the liberty of an Indigenous accused is at stake, such requests are inconsistent and reports may be written improperly, which may actually undermine *Gladue* principles (Pfefferle 2008). This significantly hinders judges' ability to consider background and systemic circumstances affecting Indigenous offenders in order to determine appropriate bail conditions and sentences."[xxix]

In comparison, Gladue Reports and the methods used to create them differ greatly from Pre-Sentence Reports. The Gladue Awareness Project summarized these differences succinctly:

"Gladue reports and pre-sentence reports with a *Gladue* component are each prepared according to their own distinctive methodology. Several past studies and publications suggest that Gladue reports provide more thorough and comprehensive information on an individual's Gladue factors in support of the first prong of the analysis, as well as more comprehensive information on available community-based sanctions and sentencing procedures in support of the second prong. The greater level of detail within Gladue reports has been linked in part to more generous time allotments available to their writers for investigation and research, as well as their writers' greater access to information from community members and other collateral interviewees due to deeper community connections and their perceived independence from the criminal justice system… As noted by law professors David Milward and Debra Parkes, the preparation of Gladue reports involves interviewing a greater number of collateral contacts like family members, community members, and Elders, and requires in-person interviews and a meaningful rapport with members of the Indigenous community due to the nature of the information collected. Gladue reports may also provide culturally appropriate sentencing options that a standard pre-sentence report would not

contemplate due to the institutional assumptions or internal policies that govern the work of probation officers."[xxx]

An evaluation of the Gladue Caseworker Program established by Aboriginal Legal Services of Toronto was conducted in 2008. The evaluation found that, "Gladue Reports were generally requested by judges and defence counsel, and accused persons generally agreed that a report should be prepared (Campbell Research Associates 2008). If a Gladue Report was refused by the accused, it was usually because the accused was in remand and did not want to delay their sentencing, or because the accused person did not want to have family members contacted by a courtworker. The cases analyzed by the evaluation indicated that sentencing was completely consistent with Gladue Report recommendations in over 60% of the cases, and mostly consistent in 20% of the cases."[xxxi]

This demonstrates that Gladue Reports can reasonably suggest sentencing options and alternatives aligned with both prongs of the *Gladue* Decision (a. systemic and background factors, b. appropriate sanctions) and provide detailed aftercare planning not found within traditional PSRs.

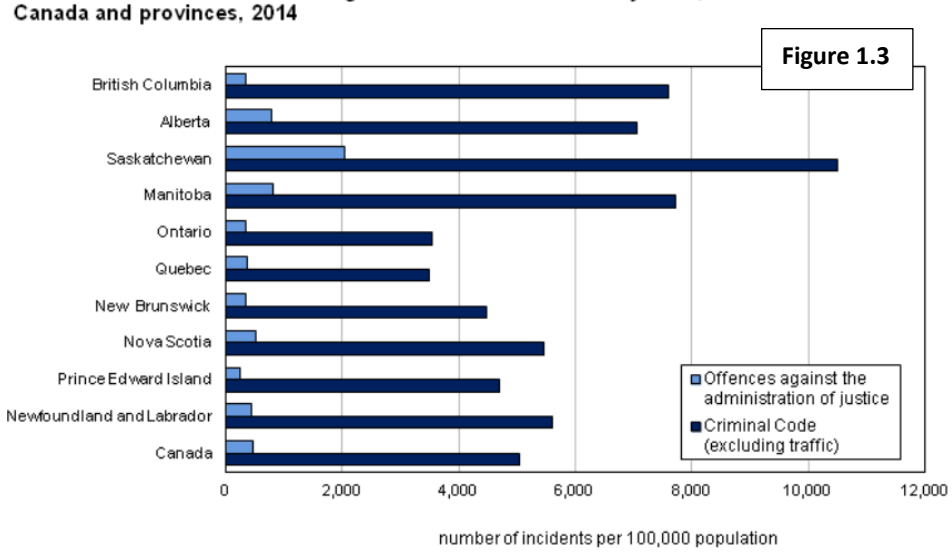
Administration of Justice Offences (AOJOs) Contribute to Over-Incarceration

"In 2014, about one in ten *Criminal Code* offences reported by police was an offence against the administration of justice. In adult criminal courts, over one-third of all completed cases involved at least one administration of justice charge. Administration of justice offences include such *Criminal Code* violations as failure to comply with conditions, failure to comply with an order, failure to appear and breach of probation."[xxxii]

"Offences against the administration of justice are most often the result of an offender's earlier criminal behavior and prior interactions with the justice system, and in this way are sometimes seen as a 'revolving door' of crime. Understanding the volume and nature of this type of [offence] is important to understanding the pressures that may be affecting the justice system as a whole. … For Canada's policing community, administration of justice offences represent about one tenth of all police-reported crime, and involve a relatively large proportion of individuals against whom charges are laid by police. The rate of persons formally charged with administration of justice offences is growing, especially among women, at a time when overall rates of persons charged with other kinds of crime continue to decline. The rate of persons charged with administration of justice offences was higher in 2014 than a decade ago, despite the decline in the actual rate of police-reported incidents of this type of [offence]."[xxxiii]

"…Canadian provinces have historically shown substantial variation with respect to police-reported offences against the administration of justice. This variation continued in 2014, with the highest provincial rates of offences against the administration of justice being reported in Saskatchewan (2,041 incidents per 100,000 population) and Manitoba (810). Rates of offences against the administration of justice also tend to be particularly high in the northern regions of these two provinces (Allen and Perreault 2015). In contrast, Prince Edward Island reported the lowest rate of administration of justice offences (250). … In most provinces, offences against the administration of justice represented about one-tenth of overall police-reported crime. The most notable exceptions to this pattern were Saskatchewan, Prince Edward Island and British Columbia [Figure 1.3]. Saskatchewan reported the largest proportion of offences against the administration of justice relative to other police-reported crimes, with almost one-fifth (19%) of all reported incidents falling into this category. Meanwhile, in Prince Edward Island and British Columbia, less than 1 out of 18 police-reported incidents of crime (5%) constituted an offence against the administration of justice."[xxxiv]

Crime rate and rate of offences against the administration of justice, Canada and provinces, 2014



Note: *Criminal Code* offences exclude traffic offences. Offences against the administration of justice include: failure to comply with conditions, escape custody, prisoner unlawfully at large, failure to attend court, breach of probation, and other offences against the administration of laws and justice (Part IV *C.C.*). Data represent the most serious violation reported per incident. Rates are calculated per 100,000 population using revised July 1st population estimates from Statistics Canada, Demography Division.
Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.

In 2015, the rate of AOJO charges was greater in Saskatchewan and rose from 2,041 (2014) to 2,170 incidents per 100,000 population.[xxxv]

Figure 1.3[xxxvi]

"In all provinces and territories, incidents of failure to comply with conditions comprised the largest proportions of offences against the administration of justice reported in 2014. Also in line with the national trend, breach of probation was the next most common administration of justice offence among all provinces and territories except for Saskatchewan and Alberta. In these two provinces, failure to appear was the second most frequently-reported offence against the administration of justice."[xxxvii]

AOJOs are more likely to result in a custodial sentence

"Across Canada, in 2014/15, about 51% of charges with an AOJO as the most serious offence received a custodial sentence whereas this proportion was 37% for all cases with a finding of guilt."[xxxviii] This could suggest a higher likelihood of receiving a custodial sentence for AOJOs, indicating the seriousness with which the justice system addresses breaches of court orders and related offenses.

Indigenous people are overrepresented in the number of people receiving AOJOs and are more likely to be admitted to remand

"Research has suggested that Indigenous people are over-represented in the number of people who receive AOJOs [Public Works and Government Services Canada & Orsi, M. M. *Administration of Justice Offences among Aboriginal People: Courtworkers' Perspective*. Research and Statistics Division, Department of Justice Canada, 2013]. In 2014/15, Indigenous people represented one quarter (25%) of adult admissions to remand [for AOJOs], a proportion 8 times greater than their representation in the overall population (3%). This proportion is up 9% from 2004/05 when 16% of adults admitted to remand were Indigenous."[xxxix]

The Cost of Incarceration versus Community Supervision

According to a CBC report from November 2016, the average cost to incarcerate someone in a provincial jail (SK) was $62,000/year.[xl] This averages out to roughly $170/day (62,000/365 = 169.86).

Where incarceration of an offender creates significant costs, at the other end of the spectrum falls community supervision. The Parliamentary Budget Office stated, "In 2016-17, an average of 8,572 offenders were supervised in the community at an average cost of $18,058/year."[xli] This averages out to roughly 50/day (18,058/365 = 49.47).

Administrative Segregation, Structured Intervention Units, and Mental Health

What is Administrative Segregation? "Solitary confinement in Canada existed in the form of administrative and disciplinary segregation. Both types of segregation entail locking an inmate in a cell for more than 22 hours a day. Administrative segregation was used to separate prisoners that were either at risk or posed a threat to the safety of prisoners or staff in penitentiaries. Disciplinary segregation was used for punitive purposes and was highly regulated by law and policy. As a result of the heavy regulation of disciplinary segregation, most Canadian correctional officers preferred to rely heavily on administrative segregation to isolate prisoners creating abuses of its usage." [xlii]

Negative mental health outcomes are highly connected with criminal justice system contact/re-contact:

"The practice of solitary confinement dates back to the early 19th Century. The practice was scaled back during the first half of the 20th Century after a United States Supreme Court review of the practice found that it signified cruel and unusual punishment beyond a prison sentence itself, it was leading to increased prevalence of suicide and violent insanity, and it was rendering inmates useless upon return to their communities (Shalev, 2009, pp.16- 17). The practice was reinvigorated in the late 1970s as a way to manage prisoners rioting for improved conditions."[xliii]

A report authored by the National Research Council and Institute of Medicine (U.S.) studied the impacts that prison conditions have on the health and wellbeing of inmates, "Poor ventilation, overcrowding, and stress may exacerbate chronic health conditions. More evidence is available regarding the effects of incarceration on mental health. Two conditions are especially associated with a serious degeneration of mental health: overcrowding and isolation units. The association between crowding and suicide or psychiatric commitment has been noted at least since the 1980s. Strains on staffing and facilities have particularly serious repercussions on wait times and holding conditions for the mentally ill. Case studies have also revealed widespread and serious reactions to segregation units, in which inmates are restricted to isolation cells for 23 hours a day. The restriction of movement and deprivation of human contact triggers psychological responses, ranging from anxiety and panic to hallucination. A review of health effects of incarceration also must consider sexual assault and intentional injury, either self-inflicted or resulting from assault."[xliv]

This U.S. based report cites segregation units isolate prisoners for 23hrs/day. As recently as 2022, similar policies and practices are followed in Saskatchewan's provincial jails, where individuals who are placed in Administrative Segregation are supposed to receive a minimum 2 hours outside their cell per day.[xlv] This works out to 22hrs/day in segregation. In 2018, overcrowding and improper Administrative Segregation practices were both noted as issues plaguing Saskatchewan jails."[xlvi]

In a 2014 report on living conditions in Saskatchewan's provincial prisons, Dr. Jason Demers stated: "As one inmate relates, inmates in segregation are locked up for 23 hours each day and get one hour

outside of their cell to shower, make phone calls, or use the exercise yard. In segregation, an individual's scheduled rotation for yard time moves back an hour each day (from 10AM to 9AM and so on). When the scheduled time reaches 8AM, the final slot, it is pushed to 8PM the next day to restart the rotation. This means that inmates, as a part of the regularly scheduled rotation, are going for 36 hours without any time outside of their cell. The UN Standard Minimum Rules for the Treatment of Prisoners dictates that inmates must be provided with at least one hour of open air access each day (Shalev, 2008, pp. 43-44). Former inmates describe acquiring skin conditions from being forced to wear the same clothes for too long in segregation at Regina Correctional; being unable to experience natural sunlight for weeks on end (the exercise yard in Regina Correctional Centre consists of a walled courtyard with steel mesh over top of it, obscuring view of the sky); only being served two sandwiches a day; and getting sores from being forced to sit and sleep for weeks on a concrete, hockey-mat lined floor in "the hole" at Prince Albert Correctional Centre. People's bodies are not only subject to unhealthy conditions in segregation but, because inmates sent to segregation are often considered to be a problem, they sometimes face abuse at the hands of guards. A former inmate described witnessing a particularly distressing scene in his neighbouring cell:

> 'There was a guy they brought into segregation … it was probably about 10:30 [or] 11:00 at night. They dragged him in. Five, six guards. Big guys. And he was handcuffed. He was screaming. They went in there, you heard them kind of laughing. They come out with that guy's underwear in their hands, ripped right off of him. The next day they let us out for exercise. We were the first guys to go, and that guy was still sitting in his cell. Bare cell. No mattress. Naked. Bleeding. Nothing at all. He was just there. Sitting. Up all night. They just left him like that, you know, for 24 hours before they came and even gave him anything. It was the next night, probably nine o' clock that they brought him bedding, a mattress, and some clothes. So I don't know, like … that was pretty cruel to see … He was probably maced because he was covered in something. They didn't even let him wash up, you know. They should have let him do that at least.'"[xlvii]

The Auditor General, Tara Clemett, noted in her 2022 – Vol. 2 Annual Report that due to improper records management, it is not always known whether individuals receive their minimum allotted time outside their cells:

"In 15 of the 20 inmate files tested, we found correctional centre staff did not complete daily reviews and document them in the Ministry's IT system as required. For example, one inmate spent 24 days on administrative segregation. During that time, only eight daily reviews were completed. In addition, we found staff did not always document discussions with the inmate about reasonable alternatives to administrative segregation. …Each day, while on administrative segregation, inmates are allowed to receive a minimum of two hours out of cell leisure time. We found correctional centre staff inconsistently track this time. For example, some centres keep log books (but not all the same template). However, the log books do not clearly indicate how long an inmate was out of the cell. One centre noted out of cell time in the daily reviews, but the reviews were not always completed every day."[xlviii]

The Auditor General further finds that, "Without completing and documenting daily reviews of inmates placed on administrative segregation, it increases the risk inmates remain on segregation longer than necessary or are not receiving their two hours out of cell time. This could negatively affect the health and well-being of the inmate on administrative segregation."[xlix]

"CSC's data show that those whose mental health status was deteriorating while in the SIU were much more likely to be held for a very long time in the SIU. For example, of those identified as having various mental health issues and getting worse, 74.6% have been in SIUs for over a month."[l]

In 2018, the *Regina Leader-Post* obtained data from an internal review audit conducted by the Government of Saskatchewan on Administrative Segregation practices, documentation, and reasons for segregation on 458 inmate files. The *Leader-Post* found that Administrative Segregation and solitary confinement were being used to address a lack of space in over-crowded units, a measure which falls outside of legislated rules.[li]

"[I]nformation in the review also shows that solitary confinement is sometimes used to house inmates when there is no room for them in an appropriate security unit. 'Count contingency' was cited as a reason for segregating inmates in 36 cases of the [458] files."[lii]

Out of the 458 inmates placed on Administrative Segregation, "The document did reveal that 82 per cent of the inmates the audit examined were Aboriginal. Nearly 40 per cent were younger than 25. More than half were remanded, which means they had not been convicted and sentenced for their alleged crime."[liii]

"According to his own account, [inmate] Bronson Gordon was on remand when he went to the hole. He said he spent time in segregation in Regina and Saskatoon correctional centres while awaiting trial for murder. Gordon said his time in segregation, particularly in Regina, was tough on his mental health. He said he attempted suicide during one of his stints.

'It just increases the depression,' he said. 'It increases the worthlessness of your life.'

'There was a lot of psychosis stuff that happened in there, like seeing things, hallucinating, taking things out of context,' he continued.

The review notes that 46 per cent of segregated inmates at Saskatoon Correctional Centre have mental health diagnoses. At Pine Grove, the women's jail in Prince Albert, the figure stands at 70 per cent. Forty-two inmates were in administrative segregation for 'suicide watch.'"[liv]

"Currently, the province is meeting 15 of the 20 Mandela rules,[2] according to the review. … One states that prisoners 'shall have at least one hour of suitable exercise in the open air daily if the weather permits.' But at Regina Correctional Centre, inmates in segregation only have access to a 'Fresh Air Room,' described as 'an enclosed room with a window that can be opened to let in a draft.' … Another rule prohibits 'indefinite' or 'prolonged' stints in segregation, something the review suggests happens frequently. The UN's special rapporteur on torture has mentioned 15 days as a hard ceiling. <u>But about a quarter of the [458] inmates covered by the review served terms of more than 60 days in the hole</u>."[lv]

458/4 = 114.5 = One Quarter.

Out of the audited files, roughly 115 inmates spent over 60 days in Segregation in 2018, despite the UN's rules on the humane treatment of prisoners.

It is clear from the summarized data that the negative state of inmate mental health, and the ability of incarceration/segregation to impact inmate mental health, are greatly connected.

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[2] The *Nelson Mandela* rules, or the revised *UN Standard Minimum Rules for the Treatment of Prisoners*, set out the minimum standards for good prison management, including to ensure the rights of prisoners are respected.

Structured Intervention Units

Canada's federal corrections are starting to transition away from Administrative Segregation Units into what are called Structured Intervention Units. Currently, 15 SIUs are in operation across Canada, with one in place at the Saskatchewan penitentiary.[lvi] The legislation governing SIUs was implemented with the intent, "…that transfers to SIUs were to be rare and to be used 'only if… there is no reasonable alternative…' (*Corrections and Conditional Release Act* [CCRA] *S. 34(1)*). The expectation was that in the new regime, long stays in SIUs would be avoided and that prisoners would not be confined to their cells 24 hours a day. Instead, the legislation mandated that they would be offered a minimum of four hours out of their cells every day, two hours of which was supposed to involve meaningful human contact."[lvii]

Correctional Service Canada states that, "When an inmate is transferred to an SIU, they continue to have access to essential health services and reasonable access to non-essential health services consistent with their level of health care need. They will receive daily health care visits by a registered health care professional without a barrier who will observe and speak to them directly to review their physical and mental health. Health professionals will monitor and address health care concerns and administer medication or other treatments as required."[lviii]

To evaluate the ongoing implementation of SIUs, the Structured Intervention Unit Implementation Advisory Panel was formed. Early evaluations of SIUs reveal that many of the problems which plague Administrative Segregation remain prevalent in the new units.

"As with many other aspects of Canadian life, experience in the most restrictive of Canada's forms of imprisonment – the SIU (Structured Intervention Units) – is not equally distributed across groups within Canada. An obvious group for Canadians to be concerned with and to monitor – and one which the Government of Canada has expressed concern in the past – is Indigenous Peoples. If SIUs are potentially harmful (if they are operated with little difference from the former administrative segregation units), then given the history of Canada's treatment of Indigenous Peoples, we should be especially concerned about the representation of Indigenous Peoples (as well as other marginalized or vulnerable groups) within these units. Indigenous Peoples constitute about 4.2% of the adult Canadian population yet on 22 August 2021 constituted about 32% of the CSC in-custody population. On that date, 48.9% of the SIU population were Indigenous Peoples."[lix]

In concluding its evaluation of SIUs, the SIU Implementation Advisory Panel identified numerous areas of concern:

"In this initial overview of the operation of the SIUs, [the Panel] [has] identified four important findings.

a) The SIU – the most restrictive form of imprisonment permitted by the CCRA – is experienced more by some groups (e.g., Indigenous prisoners) than others, and is more common in some regions than in others.
b) The length of SIU stays is in many instances very long, and the length of time that people remain in SIUs varies dramatically across regions. The legislation requires that stays in an SIU should 'end as soon as possible' (CCRA S. 33). It seems that what is 'possible' varies across regions.
c) The practices that are supposed to differentiate the SIUs, on the one hand, from Administrative Segregation or Solitary Confinement, on the other hand, are not being routinely delivered. We are referring here to the mandated four hours out of the SIU cell and two hours of meaning[ful] human contact out of the cell. Furthermore, refusals on the part of prisoners to leave their cells do not

adequately account for the failure of prisoners to receive the time out of cell described in the legislation.

d) The data reveal very serious concerns about the use of SIUs with prisoners who face mental health challenges, and particularly with those whom CSC has identified as suffering from deteriorating mental health.

In sum, long stays in SIUs without the time out of cell or the ameliorating effects of [meaningful] human interactions contemplated by the legislation have become a feature of Canada's use of SIUs."[lx]

The Detrimental Effects of Incarceration on Mental Health, Behavioural Responses, and Post-Incarceration Syndrome

- **Article: "**Research Roundup: Incarceration can cause lasting damage to mental health"
- **Description:** Incarceration can trigger and worsen symptoms of mental illness — and those effects can last long after someone leaves the prison gates.
- **Citation:** Quandt, Katie Rose, and Jones, Alexi. "Research Roundup: Incarceration can cause lasting damage to mental health." *Prison Policy Initiative.* May 13, 2021. https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/
- The following excerpts were taken from Research Roundup: Incarceration can cause lasting damage to mental health"

"We often talk about the disturbingly high numbers of people with mental health disorders locked up in prisons and jails. But less attention is paid to the ways in which incarceration itself perpetuates this problem by creating and worsening symptoms of mental illness. Research shows that, while it varies from person to person, incarceration is linked to mood disorders including major depressive disorder and bipolar disorder.

The carceral environment can be inherently damaging to mental health by removing people from society and eliminating meaning and purpose from their lives. On top of that, the conditions common in prisons and jails — such as overcrowding, solitary confinement, and exposure to violence — can have further negative effects. Researchers have even theorized that incarceration can lead to "Post-Incarceration Syndrome," a syndrome similar to PTSD, meaning that even after serving their official sentences, many people continue to suffer the mental effects.

Incarceration itself is inherently harmful to people's health

Many of the defining features of incarceration are linked to negative mental health outcomes, including disconnection from family, loss of autonomy, boredom and lack of purpose, and unpredictability of surroundings. Prof. Craig Haney, an expert on the psychological effects of imprisonment and prison isolation, explains, "At the very least, prison is painful, and incarcerated persons often suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with others." And as Dr. Seymour L. Halleck has observed, "The prison environment is almost diabolically conceived to force the offender to experience the pangs of what many psychiatrists would describe as mental illness."

Family disconnection

By its very nature, incarceration separates people from their social networks and loved ones. In 2018, when researchers at the University of Georgia analyzed the relationship between prison conditions and mental health in 214 state prisons, they found that people incarcerated more than 50 miles from home were more likely to experience depression. This isn't surprising: Psychologists have long known that people with social support and positive family relationships tend to have better psychological wellbeing.

Similarly, in a 2015 review of the research on the impact of prisons on mental health, separation from family and friends emerged as a major stressor for incarcerated people; it was also associated with psychological distress. In fact, many people described this separation as the most challenging aspect of their incarceration. Goomany and Dickinson, who authored the review, found that even when incarcerated people receive visits from family members, the prison environment makes it harder for them to connect. Correctional facilities are built and operate around the goal of security, and these "regulations and security measures inevitably impact on the relationships between prisoners, their families, and children."

Separation from children can be especially distressing for incarcerated women. As one 1998 article in *Behavioral Sciences & the Law* noted, "Separation from children is one of the most stressful conditions of incarceration for women and is associated with feelings of guilt, anxiety, and fear of losing mother-child attachment." A 2005 study found that "most mothers described an intense focus on feelings of distress, depression, or guilt." One mother in that study explained her feelings: "All I'd do was cry. It is horrible being away from your kids, especially when they the only people who care for you." Another said, "I was very hurt, depressed, crying constantly, and worried." The study noted that 6 percent of the mothers interviewed described themselves as suicidal early in their incarceration; as their separation from their children continued, 22% "continued to focus intensely on their distress."

Loss of autonomy & lack of purpose

Incarcerated people have virtually no control over their day-to-day lives, including when they wake up, what they eat, what their jobs are, and when they have access to recreation. This can lead to feelings of dependence and helplessness. The three main studies included in Goomany and Dickinson's review all concluded that this loss of autonomy harms mental health. Once again, this makes sense; we know people feel better and have better mental health outcomes when they have control over their surroundings.

Similarly, incarceration is often characterized by boredom, monotony, and lack of stimulation. Many incarcerated people have limited access to education, job training, and other programming that can fill their time and become a meaningful part of their lives. In a 2003 study of incarcerated people in England, participants reported that lack of activity and mental stimulation leads to extreme stress, anger, and frustration. Some reported using unhealthy coping mechanisms to manage boredom, including substance abuse. The 2018 University of Georgia study mentioned earlier also found that people in prisons with limited access to work assignments experienced higher levels of depression. Once again, this fits with psychological research that shows meaninglessness and a lack of purpose can lead to symptoms of anxiety, depression, and hopelessness.

Unpredictability

These feelings of anxiety and depression can be exacerbated by the unpredictable nature of the carceral environment. As the *Behavioral Sciences & the Law* article mentioned above explains, there are

numerous rules in prisons and jails that do not exist in the free world — many of which are ambiguous and only enforced erratically. The authors note that "institutional rules are enforced selectively, depending on factors such as inmate-staff relationships, staff member's mood, the severity of the rule violation, and the convenience of rule enforcement." This lack of clarity and predictability can contribute to feelings of uncertainty and stress.

Cruel conditions make a negative environment worse

Even a relatively "humane" prison or jail can contribute to negative mental health outcomes for the reasons outlined above. But the reality is that poor conditions in prisons and jails cause significant additional suffering and trauma. As the World Health Organization explains, "There are factors in many prisons that have negative effects on mental health, including: overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects (work, relationships, etc.), and inadequate health services, especially mental health services." This list of mentally damaging conditions accurately describes most [Canadian and] U.S. jails and prisons.

Overcrowding & punitiveness

Many jails and prisons throughout [Canada[lxi] and the U.S.] are overcrowded, which makes the inherently negative carceral environment even worse. Overcrowding often means more time in cell, less privacy, less access to mental and physical healthcare, and fewer opportunities to participate in programming and work assignments. Correctional administrators may respond to overcrowding by forgoing screening and monitoring of vulnerable people. A 2005 study found that overcrowding is highly correlated with prison suicide.

The 2018 study from the University of Georgia similarly found that overcrowding and punitiveness are correlated with depression and hostility. The researchers noted that punitive environments "likely set inmates on edge, making them overly hostile or even depressed."

Solitary confinement

Being put in solitary confinement, which is [known to be] a common practice in many prisons and jails, is especially harmful to mental health. As [Katie Rose Quandt & Alexi Jones] discussed in a briefing [from 2020], the stress caused by spending time in solitary confinement can lead to permanent changes to people's brains and personalities. Depriving humans — who are naturally social beings — of the ability to interact with others can cause 'social pain,' which affects the brain in the same way as physical pain. A 2000 study found that people were significantly more likely to develop psychiatric disorders while in solitary confinement than while housed in non-solitary units.

Trauma from experiencing and witnessing violence

Prisons and jails are [known to be] extremely violent places. People [may] often experience traumatic verbal or physical assaults and dehumanization at the hands of correctional officers. And the various stressors in a carceral environment also increase the chances of violence between incarcerated people. Researchers in a 2009 study found that experiencing violence during incarceration was significantly related to "aggressive and antisocial behavioral tendencies as well as emotional distress."

In fact, even *witnessing* violence behind bars can be traumatizing, as [Katie Rose Quandt & Alexi Jones] discussed previously. Exposure to violence in prisons and jails can exacerbate existing mental health disorders or even lead to the development of post-traumatic stress symptoms like anxiety, depression, avoidance, hypersensitivity, hypervigilance, suicidality, flashbacks, and difficulty with emotional regulation.

Lasting effects

Some researchers suggest that the trauma people experience behind bars can lead to Post-Incarceration Syndrome, a syndrome that shares characteristics with PTSD. A 2013 study of 25 released lifers found that participants experienced a specific cluster of mental health symptoms, including institutionalized personality traits (like distrusting others, difficulty maintaining relationships, and problems making decisions), social-sensory disorientation (issues with spatial reasoning and difficulty with social interactions), and social and temporal alienation (the feeling of not belonging in social settings).

Similarly, a 2019 literature review found that incarcerated people experience high rates of Potentially Traumatic Events, often shortened to PTEs. The review further revealed that experiencing PTEs behind bars was strongly correlated with rates of PTSD upon release.

We often think of incarceration as something people live through and from which they can ultimately be released. But the reality is that time spent in prisons and jails can create a host of collateral consequences that haunt individuals even after release. As the research shows, incarceration can trigger and worsen symptoms of mental illness — and those effects can last long after someone leaves the prison gates."[lxii]

Engaging with the *Gladue* Principles to Address Over-Representation

"[I]ncarcerating an individual does not necessarily result in rehabilitation, but could potentially foster procriminal attitudes that could lead to increased recidivism... When sentencing Indigenous people, there is a concern that the Courts will run afoul to considering *Gladue* as a blanket principle, dismissing the fact that colonialism impacted every Indigenous person differently. What may impact one individual in a negative way may not be the same for the next. Some individuals may not even be aware that their background has affected their actions. That is why it is important that when the legal profession is discussing *Gladue*, both an individualistic and a community approach is necessary to gather the full story. As stated numerous times, Parliament's intention when they introduced section 718.2(e) was to reduce the increasing overrepresentation of Canada's Indigenous people in prisons. On a large scale, it is clear there is an epidemic that persists in the lives of Indigenous people and prisons, but *Gladue* more specifically seeks to understand why that is by drawing upon the accused's life, their background, and their systemic factors. This is done by ensuring that each Indigenous person's experiences are seen as unique."[lxiii]

"In the examination of [the] decisions [*R v Arcand, R v Okimaw, R v Chanalquay , R v Lemaigre, R v J.P., R v Peters,* and *R v McIvor*], it is clear that our Prairie courts are failing in their implementation of prong two of *Gladue* [sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of their Indigenous heritage or connection] which is an imperative component of sentencing for an Indigenous person. There also continues to remain a concern that the legal profession overall continues to misapply the principles of *Gladue*. It is recommended that in order to adequately integrate the principles of *Gladue* into the sentencing of an Indigenous person, the following is required:

greater clarity and understanding around the case law, education regarding the application of the *Gladue* principles, and the inclusion of the Indigenous perspective through consultation with Indigenous people and their communities."[lxiv]

Exploring Sentencing Options and Sanctions Alternative to Incarceration

"As such, for some Aboriginal inmates, developing the tools to succeed outside of prison includes re-connecting to their Aboriginal culture to heal and be rehabilitated (Nielsen, 2003) ."[lxv]

"The benefit of cultural healing for inmates extends beyond the prison cell; cultural healing can be used as a rehabilitation tool to prevent recidivism upon release (Cox, Young, & Bairnsfather-Scott, 2009). To begin, Sacred Circles can also have a positive impact when former prisoners participate in community Sacred Circles (Cox, et al., 2009). Cox and her colleagues have documented that prisoner participation in community Sacred Circles reduces the likelihood of reoffending by demonstrating to the former inmate how their behaviour has impacted their victim(s), family, and the community (Cox, et al., 2009). This is achieved through the Sacred Circle discussions, which allows former prisoners to take accountability for their actions in a holistic environment where it meets the healing needs of the prisoners (Cox, et al., 2009)."[lxvi]

Community Justice Committees

"Generally, Community Justice Committees are made up of local volunteers who partake in the dispute resolution process. Certain criminal matters may be diverted to Community Justice Committees by the Royal Canadian Mounted Police (RCMP) or Crown Prosecutors. Offences that are eligible for diversion include theft, mischief, breaking and entering, alcohol and drug offences, vandalism, and minor assaults. Like the Community Council at Aboriginal Legal Services Toronto, an individual may be diverted only after accepting responsibility for the offence, and the community justice process is voluntary. Taking a restorative approach, Community Justice Committees hear from all parties involved in an offence when creating a resolution that aims to repair the harm done by the offence. Possible resolutions include but are not limited to community service, restitution, counselling and apologies (Northwest Territories Justice).

There are Community Justice Committees in nearly all provincial and territorial jurisdictions. In Ontario, for example, there are ten community justice programs for adults serving 24 communities. In Québec, community justice committees may identify certain measures that the court could impose in the sentencing context or act as mediators in certain disputes between members of the community. They may also work with enforcement or probation officers to follow up on measures set out in an order (Ministère de la justice du Québec 2008). In Alberta, the Alexis Restorative Justice Initiative promotes information sharing between the court system and the Alexis Justice Committee, Elders, and other members of the community. The justice committee plays an important role in sentencing by identifying the cultural and social resources available on reserve. The committee also assists the probation officer in monitoring offenders and preparing reports on offenders' compliance with probation conditions."[lxvii]

In Saskatchewan, there are 19 Community Justice Programs currently in operation (2023).

- **https://gladue.usask.ca/communityjusticeprograms**

Healing Circles

"Like other forms of alternative programs with a restorative component, healing circles involve the participation of the offender, the victim (if they wish to participate), their respective families, and other

community members such as Elders. Taking a holistic approach, healing circles aim to reach a consensus on how to repair the harm done by the offence, which includes its effects on the relationships of the offender with the victim and the community. They also address the underlying causes of the offence so as to rehabilitate the offender. Similar to community justice committees, resolutions from healing circles can include specialized counselling programs, community service with an Elder's council, potlatch or other remedies specific to the offender's cultural traditions, as well as direct restitution. As an alternative to formal court proceedings, the circle process tends to better serve the needs of Indigenous communities, and is in line with Indigenous conceptions of justice. A healing circle or other form of restorative justice process may be part of a set of conditions imposed by the court, where the court would enforce the recommendations of the circle, as well as additional conditions that it sees fit (Justice Education Society 2016).

As was noted in *Gladue*, restorative approaches are not necessarily 'lighter sentences,' but may in fact be a 'greater burden on the offender than a custodial sentence' (para 72). As offenders must take responsibility for and accept the harm that they caused, a healing circle process 'is intensive and in many ways more difficult than a passive jail sentence' (Justice Education Society 2016). Victims who participate may also find the process less traumatic than the court process. Some examples of healing circles include: Biidaaban: The Mnjikaning Community Healing Program in Ontario; the Community Holistic Justice Program in Newfoundland and Labrador; and the Prince George Urban Aboriginal Justice Society in British Columbia. The Mi'kmaq Confederacy of Prince Edward Island's Aboriginal Justice Program provides a series of circle processes for the various stages of the criminal justice process. The circles serve the objectives of Conflict-Resolution, Early Intervention, Sentencing, Healing, and Reintegration (Mi'kmaq Confederacy of PEI)."[lxviii]

Sentencing Circles

"Based on the traditional circle process, sentencing circles facilitate community participation in sanctioning an offender. Community members join the judge, the offender and the victim to discuss the factors that contributed to the offence, and options for sanctions and community reintegration. The circle often will arrive at recommendations for a community sentence that includes some form of restitution, community service, counselling, and possibly a period of custody. Unlike community justice committees and healing circles, sentencing circles are not outside of the court process. The circle's recommendations do not have to be adopted by the sentencing judge (Mi'kmaq Confederacy of PEI).

There are three types of sentencing circles: (1) the simple circle where accused persons, victims, their respective families, community representatives and members of the justice system are together in the same circle; (2) the double circle where the persons who form the simple circle are together in an inner circle, and onlookers sit in an external circle (they may move their chairs and join the inner circle if they wish); (3) separate circles, which provide for two stages in the sentencing process. In the first stage, a circle known as the "sentencing council" meets without a judge being present. Once this first committee has reached a consensus, the second circle is organized with the judge present, who is informed of the council's recommendations (Jaccoud 1999).

Sentencing circles are used throughout Canada and are integral to the provision of culturally appropriate processes for Indigenous offenders."[lxix]

Building a Release Plan

"Self-determination is one of the most important determinants of Indigenous health and well-being (Reading & Wien, 2013). It is considered essential for empowering and enabling communities to build

capacity and gain control over the wide-ranging forces that affect health and well-being at individual and collective levels (Garces-Ozanne, Ikechi Kalu, & Audas, 2016). ... To achieve equitable outcomes, Indigenous Peoples must be given full access to high-quality, responsive, comprehensive, culturally-relevant, and coordinated health and social services that target the diverse determinants of health, including individual and community self-determination (AFN, 2017; Greenwood, 2019; Jones et al., 2019)."[lxx]

Given the disproportionate representation of Indigenous individuals in Canada's criminal justice system, it's imperative to recognize *The Corrections and Conditional Release Act*. Through S. 81 of the act, it allows for transferring offenders to the care and custody of Indigenous authorities, subject to the consent of both the offender and the respective Indigenous authority, in alignment with established agreements.

Section 84, which mandates that Indigenous inmates expressing a desire for release into their communities are afforded the opportunity for community engagement and integration planning. This provision not only acknowledges the importance of Indigenous governance but also underscores the necessity of culturally sensitive and community-driven release plans to address systemic issues and support successful reintegration. Section 84 of *The Corrections and Conditions Release Act* states that

"If an inmate expresses an interest in being released into an Indigenous community, the Service shall, with the inmate's consent, give the community's Indigenous governing body;

(a) adequate notice of the inmate's parole review or their statutory release date, as the case may be and;

(b) an opportunity to propose a plan for the inmate's release and integration into that community"[lxxi]

"When people are discharged from prison or jail, they can be overwhelmed and vulnerable with sudden changes. Therefore, they need an effective discharge plan. Release plans are used to provide an individual with guidance on resources available to them post-incarceration. They also confirm housing and employment opportunities. While some institutions do provide release plans, with so many different provincial and federal institutions, it is difficult to quantify how many people are released without one. However, the participants in a study by the John Howard Society indicated that many prisoners released did not have a proper reentry plan, particularly those in remand. One participant is quoted as saying 'No – never [Discharge Plan]. I've been to jail when I was younger 15-16 times – never once has anyone ever asked me where I lived. This is how I ended up on the streets several times.'"[lxxii]

"[T]reatment might focus on ways to advocate for and empower Indigenous clients to find meaning apart from the colonial values and practices infused into colonial societies. In other words, treatment professionals may want to assist their Indigenous clients in decolonizing their recovery by restoration of Indigenous beliefs concerning life, relations, and health."[lxxiii]

"[I]n order to achieve the goal of healing incarcerated Aboriginal people, the current cultural practices must be extended upon to include the history of colonization on Aboriginal peoples and its impact on Aboriginal culture, education, employment, addictions, and incarceration. Without the knowledge of why culture was taken away and an understanding of its impact today, healing and reduced recidivism cannot occur." [lxxiv]

The principles of Self-Determination, then, must also be incorporated into determining an appropriate sentence for an Indigenous offender, while also considering the potential further impacts to that incarceration may have on an individual, their family, and community. This means that individuals should be involved in conversations about their rehabilitation, healing and aftercare plan, and perspectives on what constitutes meaningful healing ***for them.*** Merely sentencing them to generic treatment programs, often

facilitated within jails/prisons, without exploring their unique challenges, interests, and skills is not enough to affect rehabilitation and greater wellbeing/health. Additionally, incarcerated persons ***MUST*** have access to necessary medications and therapeutic options, otherwise, healing and rehabilitation will be hard to achieve. For example, if an individual becomes incarcerated and is forced to stop treatment for their ADHD (i.e., through medication) this can greatly inhibit their chances rehabilitation because they are being deprived of medication aimed to support their mental health and cognitive functions. Likewise, if an individual is released from incarceration and are unable to continue their medical treatment (i.e., through medication), this will also impact their ability to rehabilitate and reintegrate effectively. This means continuity of care is necessary when developing aftercare and release plans, and when someone becomes incarcerated.

Therefore, it is important to consult and work with an individual on their release and aftercare plan to identify meaningful pathways of support. This is particularly important when exploring rehabilitative, restorative, cultural, and spiritual programming. For example, if an individual does not have issues concerning substance use, an Alcohol Treatment program and conditions related to maintaining sobriety will not be relevant or meaningful. In fact, mandating conditions that are not relevant to an individual's rehabilitation may further impede their ability to heal, because they will not find the programming helpful to their needs. Aftercare and Release plans should address the immediate and long-term needs of an individual when they are released from custody, such as housing solutions, healthcare needs (i.e., prescriptions, medical assessments, mobility aids), transportation needs, and further support programs and community caseworkers (i.e., John Howard Society, Elizabeth Fry Society, FASD Network. etc.).

Locating Rehabilitative, Restorative, and Alternative Justice Programs and Sanctions

- 2019-2020 Rehabilitative Alternatives to Incarceration – A Handbook of Community & Government Programs in Saskatchewan - https://indigenouslaw.usask.ca/publications/rehabilitative-alternatives-to-incarceration-handbook.php

- Alternative Measures and Extrajudicial Sanctions Agencies in Saskatchewan - https://gladue.usask.ca/node/6654

- Community Justice Programs in Saskatchewan - https://gladue.usask.ca/communityjusticeprograms

- Restorative Justice Directory – Government of Canada - https://www.justice.gc.ca/eng/cj-jp/rj-jr/programs-programmes.aspx

Housing Supports and Services in Saskatchewan

Please note that these are only some of the available housing and transitional services in Saskatchewan, there are many more available depending on the region and circumstances of an individual.

- Directory of **all** Housing Supports and Services - Sask 211 https://sk.211.ca/search/?location=&looking_for%5B%5D=housing

- Central Urban Métis Federation Inc. - https://www.cumfi.org/

- Community-Based Housing Agencies - Saskatchewan Government Directory https://www.saskatchewan.ca/government/directory?ou=d46f9ed4-ec0b-41ae-a3f4-4cecc95aab63

- Coordinated Access Regina – Housing and Coordinated Service Provider - https://www.namerindhousing.ca/coordinatedaccessregina/

- Elizabeth Fry Society of Saskatchewan – Release and Aftercare Support Planning for women and gender-diverse individuals - https://elizabethfrysask.org/what-we-do/after/

- Housing Programs – Saskatchewan Government Directory https://www.saskatchewan.ca/government/directory?ou=4a680dfd-8024-4fb9-b947-7426d16c471d

- John Howard Society of Saskatchewan – Services and Programs (i.e., Adults Reintegrating into the Community; My Place Program; Redemption Project; Bert's Safe Shelter; LuLu's Lodge; and many more) - https://sk.johnhoward.ca/services/

- Prairie Region Halfway Housing Association - http://halfwayhouses.ca/en/region/prhha/

    - The Prairie Region Halfway House Association (PRHHA) is a non-profit society dedicated to providing information, education, leadership and advocacy for its member organizations all of which provide residential service facilities and programs for federal

offenders in Alberta, Saskatchewan, Manitoba, Northwestern Ontario and the N.W.T. The members of our association work together to ensure the successful and peaceful transition of offenders into the community.

- The successful rehabilitation of offenders requires the use of various tools and resources. A variety of mental and physical health support programs and addiction services are offered to address the challenges and issues faced by offenders. Spiritual and guidance programs are also available.

- Prairie Harm Reduction Saskatoon – Case Management Services – https://prairiehr.ca/pages/support-services
- Prince Albert Housing and Healthy Living Services - https://cbyfpa.ca/housing-healthy-living/
- Saskatoon Housing Initiatives Partnership - https://www.shipweb.ca/
- STR8 UP – Transitional Housing - https://www.str8-up.ca/transitional-housing/
- Saskatoon Tribal-Council - Sawēyihtotān Transitional Home Program - https://sktc.sk.ca/saweyihtotan/
    - Saskatoon Tribal Council also provides the Īkwēskīcik iskwēwak, a transitional home designed for women moving back into the community after a period of incarceration. To learn more about Īkwēskīcik iskwēwak contact the STC - https://sktc.sk.ca/justice/
    - STC - Cress Housing - https://sktc.sk.ca/cress-housing/

Wellness, Family, and Interpersonal Conflict Resources

In Saskatchewan, there are numerous sentencing options and alternatives that promote the development of healthy individuals, families, parenting, relationships, and divert offenders away from traditional methods of incarceration. Promoting the development of healthy families and relationships has great potential to improve outcomes in immediate health, and support the wellbeing of individuals, families, and communities in the long-term. These are only some of the options available in Saskatchewan, more can be located through the 2019-2020 Rehabilitative Alternatives to Incarceration Handbook, Friendship Centres, and SASK 211.

- **Programming Responses for Intimate Partner Violence in Saskatchewan, including Health Treatment Programs** (e.g., Kanaweyimik Family Violence Treatment Program, Alternative to Violence program, Family Services Saskatoon, etc.): https://www.justice.gc.ca/eng/rp-pr/jr/ipv-vpi/p13.html

- **Domestic Violence Courts:** https://sasklawcourts.ca/provincial-court/therapeutic-courts/domestic-violence-court/
    - Domestic Violence Court Brochure: https://sasklawcourts.ca/wp-content/uploads/2023/05/PC_BDVTO_Brochure_2023.pdf \

- **Drug-Treatment Court:** https://sasklawcourts.ca/provincial-court/therapeutic-courts/drug-treatment-court/

- **Mental Health Court:** https://sasklawcourts.ca/provincial-court/therapeutic-courts/mental-health-court/

- **Substance Use Treatment Centres for First Nations and Inuit:** https://www.sac-isc.gc.ca/eng/1576090254932/1576090371511

- **Mental Health and Addictions Program – Métis Nation of Saskatchewan:** https://metisnationsk.com/2020/06/15/mental-health-and-addictions-program/

- **Central Urban Métis Federation Inc. – Wellness Centre:** https://www.cumfi.org/wellness-centre

- **Métis Addictions Council of Saskatchewan Inc. (MACSI) – Treatment Centres and Programs:** https://macsi.ca/

- **Kanaweyimik Child & Family Services:** The mission of Kanaweyimik Child and Family Services is to protect children and to aid in their healing and the strengthening of families through the provision of holistic, culturally relevant services that respect the heritage, values, ceremonies, and traditions of our member communities. This program works with individuals who are currently involved in the criminal justice system, including those who with IPV, assault, or sexual related offences.
- https://www.kanaweyimik.com/programs-and-services

    - Child and Family Services Counselling Program: https://www.kanaweyimik.com/programs/child-and-family-services-program

    - Counselling Program: https://www.kanaweyimik.com/programs/counselling-program

    - Family Violence Program (uses the Circle Process and Smudging): https://www.kanaweyimik.com/programs/family-violence-program

    - Prevention Program: https://www.kanaweyimik.com/programs/prevention-program-family-preservation-services

- **Kanaweyimik Urban Services**: https://www.kanaweyimik.com/programs/urban-services
    - Intensive family support services in the home for families involved with Social Services.
    - Two Emergency foster homes available for emergency placements at all hours of the day or night.
    - Visitation services for children in care and parents to visit in a safe monitored environment.
    - Transportation services for children and families involved with Social Services.
    - Traditional and structured parenting sessions for parents involved with Social Services

- Warrior Program - Intergenerational Trauma Recovery for parents involved with Social Services.
- Domestic Violence/Family Violence treatment program for families experiencing domestic violence in their home.
- TAPWE Youth Inter-generational Trauma Recovery program for youth in care.
- Life skills for parents involved with Social Services and youth in care.

- **Other Supports Provided:**

  - Elder Monitoring can be provided
  - Parents and youth will be supported to attend cultural ceremonies if they wish to attend
  - Parent Aides and Youth Aides can be provided if required
  - Healing Circles

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